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February 13, 2008

Devin Wells, Esq., Asst. General Counsel  
Department of Environment & Conservation  
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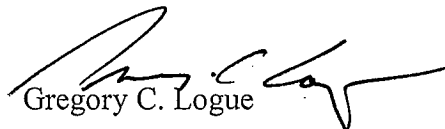
Re: **In Re: Westgate Resorts, Inc. and C. Laney and Sons Construction, Inc.**  
**Case No. WPC07-0127**

Dear Mr. Wells:

Please find enclosed a more detailed Response to the Commissioner's Order and Assessment. My client and I welcome the opportunity to seek resolution of this matter in the immediate future.

I look forward to working with you in this matter.

Sincerely yours,

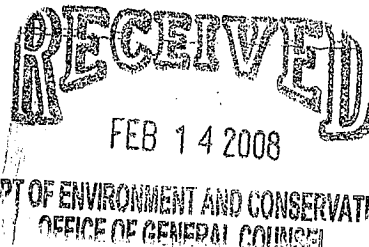
  
Gregory C. Logue

GCL:ar

Enclosure

cc: Michael E. Marder, Esq.  
Robert B. Jackson, Esq.  
Mr. Chuck Laney

016681.0006



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

|                                   |   |                            |
|-----------------------------------|---|----------------------------|
| <b>In re:</b>                     | ) | <b>DIVISION OF WATER</b>   |
|                                   | ) | <b>POLLUTION CONTROL</b>   |
| <b>WESTGATE RESORTS, INC. and</b> | ) |                            |
| <b>C. LANEY AND SONS</b>          | ) |                            |
| <b>CONSTRUCTION, INC.,</b>        | ) | <b>CASE NO. WPC07-0127</b> |
|                                   | ) |                            |
| <b>Respondents.</b>               | ) |                            |

**WESTGATE RESORT, INC. AND C. LANEY AND SONS CONSTRUCTION, INC.'S  
RESPONSE TO COMMISSIONER'S ORDER AND ASSESSMENT**

Come Westgate Resorts, Inc. ("Westgate") and C. Laney and Sons Construction, Inc. ("C. Laney"), both by and through counsel, and pursuant to Tenn. Code Ann. § 69-3-101, *et seq*, and would state as follows for their response to the Commissioner's Order and Assessment:

1. Westgate and C. Laney admit the allegations contained in Paragraph I of the Commissioner's Order and Assessment.
2. Westgate and C. Laney admit the allegations contained in Paragraph II of the Commissioner's Order and Assessment.
3. Westgate and C. Laney admit the allegations contained in Paragraph III of the Commissioner's Order and Assessment.
4. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph IV of the Commissioner's Order and Assessment; however, these parties do not have reason to contest that the Commissioner has the rights and duties described therein.
5. Westgate and C. Laney admit the allegations contained in Paragraph V of the Commissioner's Order and Assessment to the extent that same aver that said entities are "persons" as defined by Tenn. Code § 36-3-103(20). For further answer, Westgate and C. Laney deny that they have violated the Water Quality Control Act.

6. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph VI of the Commissioner's Order and Assessment; however, these parties do not have reason to contest the facts set forth therein.

7. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph VII of the Commissioner's Order and Assessment.

8. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph VIII of the Commissioner's Order and Assessment.

9. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph IX of the Commissioner's Order and Assessment to the extent that same pertain to the Division of Water Pollution Control's receipt of a complaint and/or subsequent investigation conducted as a result of said complaint. For further answer, West and C. Laney deny the allegations contained in Paragraph IX of the Commissioner's Order and Assessment to the extent that same aver that these entities failed to implement effective erosion control measures. Further, Westgate and C. Laney aver that the stream crossing believed to be referenced was constructed at a location where a previous metal culvert had existed.

10. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph X of the Commissioner's Order and Assessment.

11. Westgate and C. Laney admit allegations contained in Paragraph XI of the Commissioner's Order and Assessment to the extent that same indicate that the Division of Water Pollution Control issued a Notice of Violation for violations observed during a March 23, 2000 site investigation. For further answer, Westgate and C. Laney admit that said Notice of

Violation required the implementation of certain erosion control measures. Further, Westgate and C. Laney aver that said measures were properly implemented as directed.

12. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XII of the Commissioner's Order and Assessment Paragraph.

13. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XIII of the Commissioner's Order and Assessment Paragraph. For further answer, Westgate and C. Laney admit that there were certain problems with high velocity water coming from adjacent properties which overwhelmed the erosion control measures which were implemented.

14. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XIV of the Commissioner's Order and Assessment.

15. Westgate and C. Laney admit the allegations contained in Paragraph XV of the Commissioner's Order and Assessment to the extent that same indicate that a second Notice of Violation was issued on or about March 5, 2001. For further answer, Westgate and C. Laney admit that said Notice of Violation required the implementation of certain erosion control measures and required Westgate to attend a Compliance Review Meeting on or about March 21, 2001. Further, Westgate and C. Laney aver that said measures were properly implemented as directed and that Westgate representatives attended and actively participated in said meeting.

16. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XVI of the Commissioner's Order and Assessment.

17. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XVII of the Commissioner's Order and Assessment.

18. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XVIII of the Commissioner's Order and Assessment.

19. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XIX of the Commissioner's Order and Assessment.

20. Westgate and C. Laney admit the allegations contained in Paragraph XX of the Commissioner's Order and Assessment.

21. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in said Paragraph XXI of the Commissioner's Order and Assessment to the extent that same indicate the a complaint received by the Division of Water Pollution Control or as same pertain to any investigation which was conducted in response to said complaint. For further answer, Westgate and C. Laney deny the allegations contained in said Paragraph XXI of the Commissioner's Order and Assessment to the extent that same indicate these entities installed road crossings without proper authorization. Further, Westgate and C. Laney aver that that metal culverts installed were installed by previous owners and/or other residents.

22. Westgate and C. Laney admit the allegations contained in Paragraph XXII of the Commissioner's Order and Assessment to the extent that same indicate that the Division of Water Pollution Control issued a third Notice of Violation on or about August 29, 2001. Westgate and C. Laney admit that the Division of Water Pollution Control advised that the storm water design was inadequate to handle the volume of water anticipated and that representative requested that same be redesigned to handle the expected volume of water. For further answer,

Westgate and C. Laney admit that said Notice of Violation required the implementation of certain erosion control measures. Further, Westgate and C. Laney aver that said measures were properly implemented as directed.

23. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XXIII of the Commissioner's Order and Assessment.

24. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XXIV of the Commissioner's Order and Assessment to the extent that same pertain to the specific of a site investigation and/or what was observed. For further answer, Westgate and C. Laney admit that certain erosion problems did exist at the referenced time and that said problems arose mainly from naturally occurring conditions on land that Westgate recently acquired (the Maples property). However, Westgate and C. Laney were attempting to keep any erosion contained to the Westgate property by using tiles and other means of water diversion.

25. Westgate and C. Laney admit allegations contained in Paragraph XXV of the Commissioner's Order and Assessment to the extent that same indicate that the Division of Water Pollution Control issued a fourth Notice of Violation on or about August 3, 2004. For further answer, Westgate and C. Laney admit that said Notice of Violation required the implementation of certain erosion control measures. Further, Westgate and C. Laney aver that said measures were properly implemented as directed.

26. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XXVI of the Commissioner's Order and Assessment.

27. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XXVII of the Commissioner's Order and Assessment.

28. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XXVIII of the Commissioner's Order and Assessment.

29. Westgate and C. Laney deny the allegations contained in Paragraph XXIX of the Commissioner's Order and Assessment to the extent that same indicate that proper erosion prevention measures had not been implemented.

30. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XXX of the Commissioner's Order and Assessment.

31. Westgate and C. Laney admit the allegations contained in Paragraph XXXI of the Commissioner's Order and Assessment to the extent that same indicate that the Division of Water Pollution Control issued a fifth Notice of Violation on or about October 26, 2004. For further answer, Westgate and C. Laney admit that said Notice of Violation required the implementation of certain erosion control measures. Further, Westgate and C. Laney aver that said measures were properly implemented as directed.

32. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XXXII of the Commissioner's Order and Assessment.

33. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XXXIII of the Commissioner's Order and Assessment.

34. Westgate and C. Laney admit the allegations contained in Paragraph XXXIV of the Commissioner's Order and Assessment to the extent that same indicate that the Division of Water Pollution Control issued a sixth Notice of Violation on or about December 13, 2004. For further answer, Westgate and C. Laney admit that said Notice of Violation scheduled a Compliance Review Meeting for December 21, 2004. Further, Westgate and C. Laney aver that Westgate representatives attended and actively participated in said meeting.

35. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XXXV of the Commissioner's Order and Assessment.

36. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XXXVI of the Commissioner's Order and Assessment.

37. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XXXVII of the Commissioner's Order and Assessment.

38. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XXXVIII of the Commissioner's Order and Assessment.

39. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XXXIX of the Commissioner's Order and Assessment.

40. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XL of the Commissioner's Order and Assessment.

41. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XVI of the Commissioner's Order and Assessment.

42. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XLII of the Commissioner's Order and Assessment.



43. Westgate and C. Laney deny the allegations contained in Paragraph XLIII of the Commissioner's Order and Assessment to the extent that same indicate that the erosion control measures had not been properly installed.

44. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XLIV of the Commissioner's Order and Assessment.

45. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XLV of the Commissioner's Order and Assessment.

46. Westgate and C. Laney admit the allegations contained in Paragraph XLVI of the Commissioner's Order and Assessment to the extent that same indicate that the Division of Water Pollution Control issued a seventh Notice of Violation on or about April 30, 2007. For further answer, Westgate and C. Laney admit that said Notice of Violation required the submission of a response. Further, Westgate and C. Laney aver that the required response was timely submitted.

47. Upon information and belief, Westgate and C. Laney admit the allegations contained in Paragraph XLVII of the Commissioner's Order and Assessment.

48. Westgate and C. Laney lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XLIII of the Commissioner's Order and Assessment. For further answer, Westgate and C. Laney deny responsibility to the extent that any damages were sustained.

49. Westgate and C. Laney deny the allegations contained in Paragraph XLIX of the Commissioner's Order and Assessment.

50. Westgate and C. Laney deny the allegations contained in Paragraph L of the Commissioner's Order and Assessment.

51. Westgate and C. Laney deny that they should be subject to the provision of the Commissioner's Order and Assessment, hereby appeal the same and respectfully request that the Commissioner's Order and Assessment be vacated.

52. Any allegation not specifically admitted or otherwise qualified herein is hereby denied.

#### **DEFENSES/RELIEF SOUGHT BY RESPONDENTS**

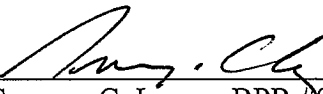
1. Westgate and C. Laney aver that they have, at all times, attempted to comply with the requirements issued by the Division of Water Pollution and Control and other government agencies.

2. Westgate and C. Laney aver that they have strived to protect the waters of the State of Tennessee and have, in many instances, taken steps to do so above and beyond those required especially during extreme weather conditions. Westgate and C. Laney have secured the services of an environmental inspection agency that has been providing reports and suggestions weekly for the past year.

3. Westgate and C. Laney seek review of the Commissioner's Order and Assessment pursuant to Tenn. Code Ann. § 69-3-115(b) and hereby request a hearing as permitted pursuant to Tenn. Code Ann. § 69-3-110.

Respectfully submitted this 13<sup>th</sup> day of February, 2008.

WOOLF, McCLANE, BRIGHT,  
ALLEN & CARPENTER, PLLC

By:   
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J. Calvin Ward, BPR #024778

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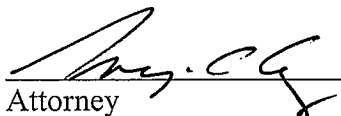
Attorneys for Respondents, Westgate Resorts, Inc.  
and C. Laney and Sons Construction, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and exact copy of the foregoing pleading has been served upon the following counsel for the parties in interest herein by delivering same to the offices of said counsel, or by mailing same to the offices of said counsel by United States Mail with sufficient postage thereon to carry the same to its destination.

Devin Wells, Esq.  
Assistant General Counsel  
Department of Environment & Conservation  
401 Church Street  
L&C Tower, 20<sup>th</sup> Floor  
Nashville, TN 37243

This the 13<sup>th</sup> day of February, 2008.

  
Attorney